

The Honorable Richard A. Jones

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MERLE NICHOLS,

Plaintiff,

v.

GEICO GENERAL INSURANCE
COMPANY,

Defendant.

Case No. 2:18-cv-01253-RAJ

**ORDER ADOPTING THE
PARTIES' JOINT
STATEMENT**

Three motions are pending in this matter: one for summary judgment (Dkt. # 73) and two regarding the certification of a class (Dkt. ## 77, 94). In support of or opposition to those motions, the parties sought to file certain documents under seal and accordingly filed several motions to seal. Dkt. ## 75, 79, 90, 99. This Court previously struck the motions to seal. Dkt. # 111. Instead, the Court required the parties to submit their sealing requests in the form of a joint statement. *Id.* That joint statement required the parties to provide, among other things, “(i) specific examples of harm from the designating party that would result from allowing the submitted materials, or portions thereof, into the public domain and (ii) articulated reasons as to why alternatives to sealing would be insufficient.” *Id.* at 4. The parties have since filed that joint statement. Dkt. # 116.

1 The joint statement is divided into two sections. The first section addresses
2 sealed documents with respect to Defendant GEICO General Insurance Company's
3 motion for summary judgment. The parties agree that "none of the exhibits to GEICO's
4 motion for summary judgment need to be filed under seal." *Id.* at 2. Given that, the
5 Court instructs GEICO to re-file unsealed versions of Exhibits 4, 5, 7, 8, and 9. Dkt.
6 # 76.

7 The second section addresses sealed documents with respect to the motions
8 relating to class certification. *Id.* at 2-3. The parties divide the sealed documents into
9 four categories. First are documents containing Plaintiff Merle Nichols's medical
10 information. Dkt. # 116 at 3. These documents, the parties concede, were publicly filed
11 in another lawsuit and are therefore part of the public record. *Id.* at 2-3. The Court
12 instructs the parties to re-file unsealed version of all documents in this category.

13 The three remaining categories are for documents containing GEICO's
14 confidential trade secrets or proprietary competitive information; confidential medical
15 information of GEICO insureds or claimants who are not parties to this lawsuit¹; and
16 briefs or declarations containing confidential information. Unlike the first category, the
17 parties still request that these categories of documents be sealed. As to these
18 documents, the Court finds that the parties have met the applicable sealing legal
19 standard.

20 In the Ninth Circuit, courts are split on whether the "good cause" or "compelling
21 reasons" standard applies to sealed documents in the class certification context.

22 ¹ The parties disagree on whether this category of documents should be sealed. Dkt.
23 # 116 at 3-4. Mr. Nichols believes that these documents are sufficiently anonymous.
24 *Id.* GEICO, on the other hand, disagrees, claiming that it is required by the law to
25 maintain the medical information of third party insureds as confidential. *Id.* The Court
26 agrees with GEICO. *Id.* Mr. Nichols, in principle, does not disagree that GEICO must
27 not improperly disclose the medical information of third party insureds. *Id.* He also
does not address GEICO's argument that, if the documents are not sealed, the data could
be "reverse engineered to identify individuals." *Id.* For these reasons, this category of
documents may remain under seal.

1 *Compare Ramirez v. GEO Grp.*, No. 3:18-cv-02136-LAB-MSB, 2019 WL 6782920, at
 2 *3 (S.D. Cal. Dec. 11, 2019) (“The vast majority of courts within this circuit treat
 3 motions for class certification as non-dispositive motions to which the good cause
 4 sealing standard applies.”) (internal quotation marks omitted) *with Yan Mei Zheng v.*
 5 *Toyota Motor Corp.*, No. 5:17-cv-06591-BLF, 2019 WL 6841324, at *1 (N.D. Cal. Dec.
 6 16, 2019) (“This Court follows numerous other district courts within the Ninth Circuit
 7 in concluding that the compelling reasons standard applies to motions to seal documents
 8 relating to class certification.”). The parties do not address this intra-circuit divide. But
 9 that does not change the Court’s holding—the documents in these three categories are
 10 appropriately sealed under either standard.

11 To the extent it is consistent with this Order, the Court **ADOPTS** the parties’
 12 joint statement. Dkt. # 116. The parties appear to have already filed the remaining
 13 three categories of documents under seal. Dkt. # 117. These documents may remain
 14 under seal. **Within 14 days of this Order**, the parties must re-file unsealed versions of
 15 all documents that they are no longer seeking to be sealed. Like the parties did with
 16 Docket Entry No. 117, each re-filed, unsealed document must be preceded by a
 17 slipsheet. The slipsheet should identify what motion, declaration, or docket entry the
 18 newly unsealed document corresponds to.

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 20 DATED this 31st day of August, 2020.

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 22

23 The Honorable Richard A. Jones
 24 United States District Judge
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